
under The Health and Disabilities Services Act 1993
in the matter of The Ministerial Inquiry into the Under-Reporting of
Cervical Smear Abnormalities

SUBMISSIONS ON BEHALF OF TAIRAWHITI HEALTHCARE
LIMITED

Dated 2000

Chapman Tripp Sheffield Young

Barristers & Solicitors, Auckland

23-29 Albert Street, Auckland 1.

PO Box 2206, Auckland, New Zealand.

Telephone 64-9-357 9000. Facsimile 64-9-357 9099. DX CP24029

Solicitor

Adam Ross/Adam Lewis

SUBMISSIONS ON BEHALF OF TAIRAWHITI HEALTHCARE LIMITED

Introduction

- 1 Counsel is grateful for the opportunity to make submissions on behalf of Tairawhiti Healthcare Limited (“THL”) to the Committee of Inquiry (“the Committee”). The submissions that follow focus on term of reference 2.
- 2 Counsel would like to express again THL’s concern for all the women affected by the inquiry. THL has a clinical relationship with many of the women. It will continue to offer all its resources to treat, counsel and support the women affected.
- 3 Counsel has limited written submissions to perceived adverse comment (arising out of cross-examination) about the way in which THL managed the local aspects of the National Cervical Screening Programme (NCSP) and peripheral services provided by THL. At this stage it is not clear whether any party (or the Committee) intends to make adverse comment about THL or its staff, so this submission is necessarily short. THL does wish to reserve its right to be heard or provide a supplementary submission, however, should criticisms arise from other parties or the Committee which are not anticipated by this written submission, or which require further detailed consideration.

Term of reference 2 – factors leading to an unacceptable level of under reporting

- 4 These submissions are addressed to the Committee on the assumption the Committee finds that there was an unacceptable level of under-reporting.

Earlier indications of an inadequacy in reporting of cervical smear abnormalities

- 5 A number of questions were put to all THL witnesses suggesting that they had, or should have had, knowledge of systematic under-reporting by Dr Bottrill before early 1999.¹ Counsel submits that the

¹ For example see van de Mark (10/7/00) B614 onwards; Duncan (11/7/00) B861 line 18, B869 line 8, B873 line 2 and onwards; Reid (11/7/00) B748 line 7; Morris (28/7/00) B2875 line 16, B2882 line 15

possibility of earlier indication of an inadequacy in reporting cervical smear abnormalities is irrelevant to the terms of reference. Earlier notification can have no relevance to the “factors that are likely to have led to ... under-reporting”.²

- 6 If the Committee concludes that a delay in identification is relevant to the terms of reference, then it is submitted that there was no evidence that any employee of THL had sufficient knowledge to take matters further before April 1999. The relevant witnesses were Dr Diane Van de Mark, Sharon Reid, Dr Bruce Duncan and Brian Morris.
- 7 Dr Van de Mark gave evidence that she became concerned about the high level of cervical cancer that she was seeing, and that she needed data to try to establish the cause. She consulted colleagues, and she began collecting names in a notebook.³ She could not, however, identify any common theme which pointed to a cause;⁴ as is now well-known, many factors can (and in Tairawhiti, probably do) contribute to a high incidence of cervical cancer. There was no evidence that she did, or should have, identified systematic under-reporting by Dr Bottrill. It is submitted that Dr Van de Mark acted entirely appropriately given the facts she had.
- 8 There was implied criticism of Sharon Reid for not doing something more after Janice Hobbs approached her about one patient.⁵ However, Ms Reid said that she did not get given a name or any other details.⁶ Without a patient name there was little more that she could do to follow up the comment made by Janice Hobbs. Janice Hobbs gave consistent evidence to that given by Sharon Reid.⁷ She (Ms Hobbs) agreed that she made an assumption that they were both talking about the same person. Sharon Reid stated in evidence that she assumed this was an isolated problem, and had no reason to

² See comment by Chair in Duncan (11/7/00) B878 line 16 to B879 line 22

³ van de Mark brief paragraphs 16 to 18

⁴ van de Mark (10/7/00) B636 line 9

⁵ Reid (10/7/00) B748 line 26 and onwards

⁶ Reid (10/7/00) B756 line 10

⁷ Hobbs (31/7/00) B3169 line 7

look further.⁸ Submitted that it is hard to see what more Ms Reid should reasonably have done.

- 9 It was suggested by counsel for the women affected that Patient 1 was prepared to let relevant health professionals know of her concerns.⁹ This was never communicated to anyone at THL. The reality is that Patient 1 wanted her identity to remain confidential.
- 10 Dr Duncan, under cross examination from Mr Corkill, confirmed that he had no personal knowledge of there being any issue about systematic under-reporting of slides read by Dr Bottrill before April 1999.¹⁰

Significance of cervical cancer statistics

- 11 Counsel apprehends that it may be suggested that the cervical cancer statistics for Tairawhiti should have raised alarm bells for THL staff. Many of these questions were directed to Dr Duncan who did not even arrive at THL until September 1997, and related to statistics which were not available until after April 1999.¹¹ Furthermore, it is submitted that the questioning was clearly outside the scope of the terms of reference. Be that as it may, it is submitted that Dr Duncan had no reason to be especially alarmed about such statistics as existed on cervical cancer in the Tairawhiti and Midland regions. When Dr Van de Mark asked him about statistics, he said that Tairawhiti had similar figures to other areas of the country with similar demographics.¹² While the numbers were of course high, they fitted the profile of the region in many other respects, and there was nothing about them which suggested systematic under-reporting.¹³ Gisborne is over-represented in very many adverse public health issues.
- 12 A consistent theme amongst witnesses at the inquiry was that statistical data regarding the incidence of cervical cancer or the mortality rates from cervical cancer on a region-by-region basis were

⁸ Reid (10/7/00) B756 line 10

⁹ Marshall (1/8/00) B3189 line 15

¹⁰ Duncan (11/7/00) B877 lines 6-18

¹¹ Duncan (11/7/00) B880 line 5; B882 line 14

¹² Duncan (11/7/00) B887 line 9; van de Mark (10/7/00) B621 line 20

¹³ Duncan (11/7/00) B882 line 16

not readily available.¹⁴ The absence of these statistics clearly made it difficult for THL public health staff to assess whether the high incidence of cervical cancer was due to an outlier, or population phenomena.

- 13 The figures produced by Tracy Mellor¹⁵ were not available at the relevant time to Dr Duncan and Dr Van de Mark.¹⁶ The figures for Tairāwhiti in 1983 to 1987 were high. The 1990-1993 figures showed that the incidence of cervical cancer was dropping.¹⁷ The figures may have been falsely reassuring. Thereafter the figures increased again.
- 14 Dr Duncan made the point¹⁸ that there were sound explanations for the jump in figures after 1993 other than the existence of an outlier. Dr Duncan referred to the “inverse care law”.¹⁹ THL had been very successful in rapidly increasing the number of women enrolled on the cervical screening programme. It is possible that the programme was capturing those who needed help the most. It was likely that a number of the first-time enrolments on the programme would have high grade smear results. Again, there was nothing to point to under-reporting; quite the contrary.

Focus on enrolment to the detriment of other aspects of the cervical screening programme

- 15 Counsel apprehends that THL may be criticised by some parties for focusing its efforts on improving the number of people enrolled on the programme at the expense of monitoring the performance of other aspects of the programme.²⁰ Such criticism, it is submitted, would be quite unfair. It is clear from all relevant witnesses that THL, like other contracted providers, had no role in monitoring other parts of the service. It is submitted that THL actually delivered an excellent

¹⁴ van de Mark's brief of evidence paragraphs 10, 11 and 16; Duncan (12/7/00) B967 line 1 and onwards; Skegg (25/7/00) B2336 line 1; Peters (5/7/00) B340 line 7; Earp (1/5/00) A854 line 8

¹⁵ “Cancer of cervix uteri: Regional analysis New Zealand 1990-1997” jointly prepared by Ministry of Health and Health Funding Authority (June 2000)

¹⁶ van de Mark (10/7/00) B625 line 5 and onwards

¹⁷ van de Mark (10/7/00) B659 line 19 - 22

¹⁸ Duncan (12/7/00) B984 line 1 and onwards

¹⁹ Duncan (12/7/00) B905 line 3

²⁰ Reid (10/7/00) B736 line 18

service in the NCSP, particularly through Sharon Reid who was spectacularly successful in getting women to enrol. It should not be overlooked, also, that many thousands of women have benefited from participation in the NCSP in Gisborne, notwithstanding the tragic failures which are the subject of the inquiry.

- 16 The Committee is also referred to Dr Duncan's evidence.²¹ THL's service requirement (see Mules exhibit 40) stated that the focus should be on enrolment. Monitoring and evaluation of the programme were done at a national level.²²

Patients misled about the effectiveness of the cervical screening programme

- 17 There has been some suggestion that the NCSP was "over-sold" to women. Dr Boyd²³ suggested that there are difficulties in selling the programme if it is not seen as being 100% infallible. However, Sharon Reid,²⁴ stated that the message was consistently given that regular smears would reduce the risk of getting cervical cancer. It was never suggested to any woman that participating in the programme was a complete cure.

Colposcopy services provided by THL

- 18 Counsel apprehends that THL may be criticised by some parties for the way in which the colposcopy service is provided.
- 19 Mr Kirton attempted to criticise Dr Van de Mark (by implication) by questioning numerous witnesses about a gynaecologist's obligation to correlate colposcopy and cytology results.²⁵ This issue was not raised with Dr Van de Mark at all. It is respectfully submitted that it would be unfair for Dr Van de Mark to be criticised when this issue was not put to her.

²¹ Duncan (11/7/00) B907 line 17 and onwards, especially B908 line 24

²² See also National Cervical Screening Programme Policy (June 1996) page 26, bullet point 8

²³ Boyd (12/4/00) A165 line 3

²⁴ Reid brief of evidence paragraph 21

²⁵ Jones (18/7/00) B1548 line 27; Teague (13/7/00) B1210 line 21; Wain (21/7/00) B1944 line 16

THL pathologists employed as locums

- 20 It appears that THL's pathologists were sometimes employed by Dr Bottrill as locums. There has been no evidence of the extent to which they read the Sydney high grades. These ad hoc arrangements had nothing to do with THL, and appear to have occurred without authorisation.

Purchase of Gisborne Laboratories Limited by THL

- 21 Counsel apprehends that there may be criticism directed at THL about the manner of the proposed sale of Dr Bottrill's laboratory to THL. In particular, there has been a suggestion that THL's prolonged consideration for the possible purchase of the goodwill of Dr Bottrill's laboratory in some way impaired quality improvements at the laboratory.²⁶ THL does not consider such criticism to be reasonable or fair. The clinician remains responsible for the quality of his or her work. It is an odd transfer of responsibility to relieve the clinician of the overriding duty, or limit it, simply because a sale may be in the offing. Another suggestion has been that THL's due diligence of the laboratory should have involved a review of slides, with the chance then to pick up serious under-reporting.²⁷ But THL had no cause to review slides; it was only ever interested in buying goodwill (the future income stream). It had no commercial interest in Dr Bottrill's company itself, nor any of its other assets or liabilities. There was simply no reason to do due diligence on Dr Bottrill's practice as such.

General

Professor Skeggs' study

- 22 If Professor Skeggs' study goes ahead there may be matters arising in the study which affect THL, having regard to the fact that many of the affected women are THL patients. Although Dr Wain stated that there were no startling examples of patients being badly managed in his review²⁸ it is possible that THL may seek to be heard and/or produce further evidence in the unlikely event of adverse criticism by Professor Skeggs.

²⁶ Farnsworth (20/7/00) B1903 lines 6-24; Lienhan (29/7/00) B2988 line 19 to B2991 line 9

²⁷ Duncan (11/7/00) B863 line 24, B865 line 19

²⁸ Wain (21/7/00) B1954 line 25

Dated this day of 2000

Adam Ross
Counsel for Tairawhiti Healthcare Limited